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RON ROSS,

Appellant,

V.

COMMUNITY COLLEGES OF SPOKANE.

Respondent.

Case No. DISM-00-0073

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at Spokane Falls Community College in Spokane, Washington, on September 25 and 26, 2001.

1.2 **Appearances.** Appellant Ron Ross was present and was represented by Edward E. Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Community Colleges of Spokane.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for gross misconduct, neglect of duty, violation of published institution rules and regulations and mistreatment or abuse of fellow workers or members of the public. Respondent alleged that Appellant engaged in a pattern of unethical, abusive, neglectful and insubordinate conduct that included, in part, theft of a handgun, interview questions, state property, food, and aluminum cans.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Johnson v. Lower Columbia College, PAB No. D93-077 (1994); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Ron Ross was a Custodian Lead and permanent employee of Respondent Community Colleges of Spokane (CCS) at Spokane Falls Community College. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal on October 12, 2000.

2.2 By letter dated September 25, 2000, Dr. Taylor notified Appellant of his dismissal for gross misconduct, neglect of duty, willful violation of the published employing institution/related board or higher education personnel rules or regulations, and mistreatment or abuse of fellow workers or members of the public. In summary, Dr. Taylor determined that Appellant:

- was abusive, hostile, used foul language and exerted excessive authority over his subordinates;
- was rude to a subordinate's mother;
- borrowed state equipment for his personal use;
- took food from the Spokane Falls Community College food bank without authorization;
- sent employees home before the end of their shifts and allowing them to receive pay for time not worked;
- stole the interview questions for two vacant custodial positions;
- failed to complete the monitor shift log and work his entire shift on Memorial Day 2000;
- stole a backpack containing a handgun from the break room table;
- brought a rifle on campus and transported the rifle in the state pickup truck;
- gave work study students the Great Grand Master keys to the college; and
- removed from campus aluminum cans belonging to the Earth Club.

1
2 2.3 Appellant began employment with CCS in the Building and Grounds department in 1994.
3 He was promoted to Custodian Lead in 1998. As a lead, Appellant assigned and checked the work
4 of three permanent employees and a varying number of student work-study employees. Appellant's
5 permanent employee subordinates were Ron Jordan, Carney Reeser and Mike Forster. Appellant
6 and his crew worked the swing shift from 2 p.m. until 10:30 p.m. Appellant and his crew reported
7 for work to Building 10, the campus facilities building. Building 10 has a break room that is
8 available for staff to use during their breaks.

9
10 2.4 Appellant's supervisor was Kevin Decker. Prior to Spring 2000, Appellant's subordinates
11 raised concerns with Mr. Decker about Appellant's mistreatment of staff. Mr. Decker talked to
12 Appellant about the concerns. In mid-spring 2000, Appellant's subordinates again brought their
13 concerns to Mr. Decker. Appellant's subordinates reported that Appellant was verbally abusive
14 with them and particularly with Carney Reeser. In May 2000, Mr. Decker again spoke with
15 Appellant about his treatment of subordinates. However, Mr. Decker continued to hear concerns
16 about Appellant's behavior and performance. As a result, Mr. Decker gave Appellant a letter dated
17 June 2, 2000, outlining his work responsibilities. In the letter, Mr. Decker stated that he wanted "to
18 eliminate the impression some people have that your position is of a 'campus monitor.'"

19
20 2.5 After receiving the letter, Appellant approached Ron Jordan and accused him of talking to
21 Mr. Decker and reporting that he wasn't doing his job. Mr. Jordan stated that Appellant was
22 "pissed" and "chewed him up one side and down the other." Mr. Jordan was angered by the
23 confrontation and contacted Rebecca Crow, Facilities Operations Manager, to report the incident.

24
25 2.6 Mr. Jordan and Ms. Crow met on June 2, 2000. During the course of the meeting, Mr.
26 Jordan made numerous allegations against Appellant. As a result, Ms. Crow initiated an

1 investigation. She interviewed 29 individuals, including Appellant, who had knowledge of the
2 allegations.

3
4 2.7 When Ms. Crow completed the interview process, she developed her findings and made a
5 recommendation. She forwarded the interview responses, her report, and her recommendation
6 regarding whether the allegations were substantiated to Greg Plummer, District Director of
7 Facilities.

8
9 *Abusive, hostile behavior:*

10 2.8 A preponderance of the credible evidence and testimony establishes that Appellant engaged
11 in an ongoing pattern of behavior consisting of talking down to subordinates, yelling at them,
12 treating them in a hostile manner and using profanity toward them. This behavior included yelling
13 at Mr. Carney in the presence of other people, calling Mr. Carney derogatory names, calling Dustin
14 Sanchez, a work-study student, a derogatory name that implied Mr. Sanchez was homosexual, and
15 yelling at Mr. Jordan, Mr. Sanchez, and others.

16
17 2.9 The College's Dignity Statement is distributed yearly to employees with their paychecks.
18 Appellant received a copy of the college's Dignity Statement. Appellant was aware of his
19 responsibility to create an environment free of harassment and to treat students and staff in a fair
20 manner and with sensitivity, dignity and respect.

21
22 *Rudeness to a subordinate's mother:*

23 2.10 Ron Jordan complained to Ms. Crowe that Appellant had called his mother on the telephone,
24 yelled at her and called her a liar. Respondent provided no direct testimony or evidence to
25 corroborate this claim.

1 *Borrowing state equipment for personal use:*

2 2.11 Prior to December 1999, employees in campus facilities were allowed to borrow state
3 equipment for their personal use provided the employee asked a supervisor first and the supervisor
4 approved the request. In December 1999, Appellant and other facilities employees attended
5 training on the ethics law. In addition, Arden Crawford, Facilities Manager, informed staff that
6 they could no longer use state equipment for personal business.

7
8 2.12 Appellant attended the ethics training on December 22, 1999. Appellant admits that on June
9 1, 2000, he took a carpet shampooer home and used it to clean his carpets. In addition, Appellant
10 stored and worked on two personal bicycles in a campus building and worked on his personal utility
11 trailer in the campus carpenter's shop. The preponderance of the credible evidence established that
12 after the training, Appellant continued to borrow state equipment for his personal use. On June 1,
13 2000, Appellant borrowed a vacuum cleaner from one of the campus buildings and on June 14,
14 2000, he borrowed a drill and screw box.

15
16 2.13 RCW 42.52.150 and WAC 292-110-010 prohibit state employees from using state resources
17 or property for private benefit or gain. Spokane Falls Community College Policy 2.10.06 prohibits
18 employees from using their positions to secure special privileges for themselves. Appellant was
19 aware of the law, rule and policy.

20
21 *Taking food from the college food bank:*

22 2.14 A preponderance of the credible testimony establishes that Appellant took some food from
23 the Food Bank. However, the Food Bank would remove out-of-date food items from the shelves
24 and leave it for anyone to take. The area occupied by the Food Bank was small and old food would
25 be removed to make room for new stock. The removed items were placed in a free box or were
26 disposed of in the garbage. Food Bank staff knew that Appellant would come to the Food Bank on

1 days that they received new stock. It was not inappropriate for Appellant to take out-of-date items
2 that the Food Bank removed from the shelves. While Appellant was seen removing food from the
3 Food Bank, Respondent failed to establish that the food he removed was not out-of-date.

4
5 *Sending employees home before the end of shift:*

6 2.15 A preponderance of the credible testimony and evidence establishes that it was a common
7 practice for Custodian Leads to allow staff and work-study employees to leave on their Fridays
8 before the end of their shifts if all their work was completed. When custodial employees were
9 allowed to leave early, they were not required to take leave or to indicate that they did not complete
10 their shift. Appellant admittedly engaged in this practice. Appellant's predecessors and peers also
11 engaged in this practice. Because this had been a longstanding, common practice for custodial
12 employees, Respondent failed to establish that it was inappropriate for Appellant to continue to
13 engage in this practice.

14
15 *Stealing interview questions:*

16 2.16 Appellant found the interview questions for a Custodian Lead position and for a
17 Maintenance Custodian Supervisor position in the trashcan in Arden Crawford's office. Appellant
18 had applied for both positions. He admits that he took the questions for the purpose of gaining an
19 advantage in the interview process.

20
21 *Failing to complete the shift log and complete work during the Memorial Day 2000 shift:*

22 2.17 Appellant was assigned the 6:30 a.m. to 3 p.m. "monitor" shift on Memorial Day 2000. As
23 part of his duties, he completed a shift log. Appellant noted in the shift log that he checked in with
24 security at the beginning of his shift. Appellant made no specific comments in the shift log
25 regarding his activities between 1:30 p.m. and the end of his shift.

1 2.18 Appellant did not complete the shift log in detail and did not indicate when he was off shift.
2 However, CCS had no guidelines or procedures for completing shift logs. Appellant completed the
3 log with minimal information, which was how he had completed them in the past.
4

5 2.19 Ron Jordan reported to work at 2:15 p.m. He talked to Appellant after he arrived and then
6 went into Building 10 to make a phone call. After he completed his call, he went outside and
7 observed that Appellant's personal vehicle was gone. Mr. Jordan did not see Appellant leave the
8 campus grounds.
9

10 2.20 A preponderance of the credible evidence fails to establish that Appellant failed to complete
11 the shift log or that he failed to work to the end of his shift.
12

13 *Stealing a backpack containing a handgun:*

14 2.21 Sean Reagan, Security Guard, started work at Spokane Falls Community College on
15 February 14, 2000. He brought his personal blue and black "Jansport" backpack with him and left it
16 on the break table in Building 10. His personal handgun was in the backpack. His shift began at 3
17 p.m. and between 3 and 5:40 p.m., Mr. Reagan and Security Guard Dave Eder patrolled the campus.
18 When they returned to the break room at 5:40 p.m., Mr. Reagan's backpack was missing.
19

20 2.22 Appellant was in the room next to the break room and Mr. Reagan questioned him about the
21 backpack. Appellant indicated that he had seen nothing out of the ordinary. Mr. Reagan did not tell
22 Appellant or Mr. Eder that the handgun was in the backpack.
23

24 2.23 At approximately 6 or 7 p.m. on February 14, 2000, Appellant showed Custodian Mike
25 Forster a blue and black backpack with a gun in it. Appellant told Mr. Forster that he had found the
26

1 backpack in the break room. Mr. Forster had not spoken with Mr. Reagan and did not know that his
2 backpack and gun were missing.

3
4 2.24 A preponderance of the credible evidence establishes that Appellant took Mr. Reagan's
5 backpack containing the handgun.

6
7 *Bringing a rifle on campus and transporting the rifle in the state pickup truck:*

8 2.25 College policy and WAC 132Q-94-150 prohibit firearms on campus. The policy states, in
9 relevant part, "[n]o employee, student or guest shall carry, transport within a vehicle or otherwise
10 possess any gun, pistol, or other firearm . . . on any college campus or other district property except
11 for use in an authorized college activity with express authorization from the chief executive of
12 campus or unit or an authorized designee."

13
14 2.26 Appellant was aware of the prohibition against firearms, including handguns and rifles, on
15 campus grounds. In addition, in the fall of 1999, Mr. Hayes reminded Appellant that guns were not
16 allowed on campus. However, a preponderance of the credible evidence establishes that in the fall
17 of 1999, Appellant gave Mike Thompson, Security Guard, a ride in a state-owned pickup truck and
18 showed him a rifle that he had in the truck.

19
20 *Giving work study students the great grand master key:*

21 2.27 Access to all areas and offices on campus can be gained by using a great grand master key.
22 A limited number of great grand master keys exist and they are to be handled responsibly. Access
23 to most areas on campus can be gained by using a grand master key. The Building and Grounds
24 department practice was that great grand master keys were not to be given to work-study students.
25 This practice was not memorialized in a written policy or procedure.

1 2.28 Generally work-study students worked with custodial staff. However, occasionally they
2 were required to work on their own. When work-study students were working on their own,
3 custodial staff would loan them keys so that they could access the areas they were to clean. Work-
4 study students could gain access to their work areas using grand master keys. Sometimes, custodial
5 staff would leave the keys for the work-study students on the table in the break room. Respondent
6 provided no evidence to establish that the key loaned to or left for work-study students was a great
7 grand master key.

8
9 2.29 On June 2, 2000, Mr. Decker directed Appellant not to loan keys or ask other custodians to
10 loan keys to work-study students. Appellant was placed on home assignment on June 3, 2000.
11 There is no evidence that Appellant violated this directive.

12
13 *Removing aluminum cans from campus:*

14 2.30 The campus Earth Club collected aluminum cans for recycling. Custodians would remove
15 the cans from the buildings, place them outside the building, and then the Earth Club retrieved the
16 cans and took them to recycling. When the club would not remove the cans, Appellant would
17 remove them. Respondent provided no testimony or evidence to establish that Appellant left the
18 campus with the cans.

19
20 2.31 Dr. Charles A. Taylor, Chancellor and Chief Executive Officer for CCS, was Appellant's
21 appointing authority. Dr. Taylor was advised of the allegations against Appellant and on August
22 17, 2000, he held a pre-termination hearing with Appellant and his representative. After
23 considering Appellant's responses to the allegations, and reviewing documentation, Dr. Taylor
24 found that Appellant was not credible and that the allegations were supported and verified by a
25 number of witnesses. Dr. Taylor determined that Appellant's actions breached the trust that the
26 college places in its employees, created a disrespectful and unacceptable work environment, and

1 undermined the ability of the college to carry out its mission of creating a learning environment in
2 which people are respected. In light of the severity of Appellant's misconduct, Dr. Taylor
3 concluded that termination was the appropriate sanction.

4 5 **III. ARGUMENTS OF THE PARTIES**

6 3.1 Respondent argues that Appellant engaged in a pattern of complete disregard for others, for
7 authority, for commonly acceptable work place standards, and for district property and time.
8 Respondent contends that Appellant was aware of acceptable work place standards yet chose to
9 violate the trust placed in him by the college, treat others in an unacceptable manner, and failed to
10 comply with supervisory directives and college policies. Respondent contends that Appellant's theft
11 of Mr. Reagan's backpack and handgun was so egregious that this charge alone warrants dismissal.
12 Respondent asserts that numerous inconsistencies exist between Appellant's testimony before the
13 Board and his answers to interview questions by Ms. Crow and therefore, Appellant lacks
14 credibility. Respondent contends that in light of the totality of the credible testimony, the college
15 has proven by a preponderance of the evidence, that Appellant's termination was warranted.

16
17 3.2 Appellant argues that Respondent is "piling on charges" based on suggestions and
18 assumptions. Appellant contends that Mr. Reeser and Mr. Jordan did not get along with him
19 because he had addressed past performance issues with each of them, and therefore they had reason
20 to fabricate allegations against him. Appellant admits that he borrowed equipment prior to
21 receiving ethics training and admits taking the shampooer home to fix it, but he denies borrowing
22 other state-owned equipment after the training. In addition, Appellant admits that he kept two
23 bicycles in a campus building; took food he was authorized to take from the Food Bank; sent
24 employees home before the end of their shifts; took the interview questions for two recruitments out
25 of the trashcan in Mr. Crawford's office; and loaned grand master keys to work-study students.
26 Appellant asserts that these actions, however, do not warrant dismissal. Appellant admits he is not

perfect, but he denies mistreating staff or Mr. Jordan's mother, leaving before the end of his shift on Memorial Day, removing aluminum cans from the campus, stealing Mr. Reagan's backpack and handgun, and bringing a rifle onto campus. Appellant asserts that Respondent failed to meet its burden proving that he engaged in misconduct that warrants dismissal.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.5 Abuse of fellow employees is established when it is shown that the employee wrongfully or unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077 (1994)

1 4.6 Willful violation of published employing agency or institution or Personnel Resources
2 Board rules or regulations is established by facts showing the existence and publication of the rules
3 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
4 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
5 Health Services, PAB No. D93-053 (1994).

6
7 4.7 Respondent has proven by a preponderance of the credible evidence that Appellant engaged
8 in inappropriate conduct toward employees, borrowed state equipment for personal benefit after
9 being directed not to do so, stole interview questions for two recruitments, brought a rifle on
10 campus and transported it in a state-owned pickup truck, and stole a backpack containing a handgun
11 from the break room.

12
13 4.8 Appellant's actions constituted abuse of fellow employees, neglect of duty, and willful
14 violation of rule, regulations and policies. Appellant breached the trust placed in state employees
15 and adversely affected the ability of the college to fulfill its mission of creating a respectful learning
16 environment. Appellant's actions rose to the level of gross misconduct.

17
18 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to
19 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
20 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
21 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
22 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
23 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

1 4.10 Under the totality of the proven facts and circumstances, and in light of the egregious nature
2 and continuing pattern of Appellant's misconduct, dismissal is appropriate and the appeal should be
3 denied.

4
5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Ron Ross is denied.

7 DATED this _____ day of _____, 2001.

8 WASHINGTON STATE PERSONNEL APPEALS BOARD

9
10 _____
11 Walter T. Hubbard, Chair

12 _____
13 Gerald L. Morgen, Vice Chair

14 _____
15 Leana D. Lamb, Member
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